

H-1 USE OF FACILITIES FOR CONTRACTOR'S OWN ACCOUNT

During the term of this contract, the Contractor may use the facilities designated under Section B and other Government-owned property in its custody under this contract to conduct research and development activities for its own account, to the extent and in accordance with such terms and conditions as DOE and the Contractor may agree to from time to time as set forth in Use Permit No. DE-GM06-00RL01831 dated February 01, 2000. Except as incorporated by reference in the aforementioned contract, the terms and conditions of this contract shall not apply to such research and development activities.

H-2 INCORPORATION OF OFFERORS REPRESENTATIONS AND CERTIFICATIONS

Section K, Representations, Certifications, and Other Statements of Offerors are hereby incorporated in its entirety by reference.

H-3 TRANSPORTATION

The Contractor shall use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

H-4 SOURCE AND SPECIAL NUCLEAR MATERIALS

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

H-5 WORKERS' COMPENSATION

- (a) Except as provided in paragraph (b) the Contractor shall provide workers' compensation coverage for its Pacific Northwest National Laboratory employees either under the workers' compensation insurance laws of the state in which any part of the work is carried on under this contract or by insurance offering equivalent benefits or otherwise, as approved by the Contracting Officer. To the extent required by the workers' compensation laws of any state in which any part of the work under this contract is carried on, and to the extent such laws are applicable, the Contractor shall fulfill its obligations with respect to workers' compensation coverage of subcontractors' employees. Costs incurred in connection with such obligations shall be allowable to the extent they are considered allowable pursuant to the clause titled, Allowable Costs and Fee.
- (b) The coverage afforded by the workers' compensation statutes of the State of Washington (Title 51, Revised Code of Washington) shall, for performance of work under this contract at the Hanford Site, including work subcontracted, except work performed under certain lump-sum subcontracts as determined by the Contracting Officer, be subject to the following:

- (1) Except as provided above and in paragraph 6 below, the Contractor shall be relieved of all obligation to pay premiums for such coverage, DOE having agreed, under the terms of a contract with the Department of Labor and Industries of the State of Washington (hereinafter called "DOL") to bear the actual cost of such coverage.
- (2) The Contractor shall submit to DOE, for transmittal to DOL, such payroll records as are required by the said statutes, except as provided above and in paragraph (6) below.
- (3) The Contractor shall, for coverage of each individual employer or any member or officer of any corporate employer provided for by Section 51.32.030 of the Revised Code of Washington, submit to DOE for transmittal to DOL the written notice required by that section.
- (4) The Contractor shall submit to DOE, for transmittal to DOL, the accident reports provided for by Section 51.28.010 of the Revised Code of Washington.
- (5) The Contractor shall take such action, and only such action, as DOE requests in connection with any such accident reports, including assistance in the investigation and disposition of any claim thereunder and subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.
- (6) The Contractor shall be responsible for making all payments and submitting all reports required by Title 51, Section 51.32.073, Revised Code of Washington.

H-6 UNEMPLOYMENT COMPENSATION

- (a) The Contractor will provide coverage for staff members under state unemployment compensation laws in any state in which any part of the work is carried on.
- (b) DOE shall be given the benefit of any employer experience rating credit received by the Contractor and attributable to wages subject to contribution paid under this contract.

H-7 PROTECTION OF HUMAN SUBJECTS

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745, Federal Policy for the Protection of Human Subjects, must be complied with. This requirement applies to research undertaken with DOE support, work for others, and collaborations with other institutions.

H-8 PROCEDURE TO DISALLOW COSTS

- (a) General. The Parties agree that this contract is a Government cost-type contract funded by a Checks Paid Letter of Credit. If either party believes funds have been used to pay for costs which are unallowable under this contract, the following procedure will be invoked.

- (b) The party which initially identifies a cost of questionable allowability will inform the other party of the issue. The Contractor and Contracting Officer shall make every reasonable effort to reach a satisfactory settlement. If the Parties are unable to reach a settlement, the Contracting Officer will issue a written notice in accordance with the clause titled, Notice of Intent to Disallow Costs.
- (c) If the Contracting Officer issues a written decision pursuant to the clause titled Notice of Intent to Disallow Costs, (a)(2), this decision will be considered a final decision for the purposes of the clause titled, Disputes. Within thirty (30) days after receipt of this decision, the Contractor will make payment of the amount set forth in the decision. Payment shall be made by check or other appropriate mechanism as approved by the Contracting Officer. Payment by the Contractor shall not waive or otherwise preclude its right to appeal or file suit pursuant to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

H-9 OTHER PATENT RELATED MATTERS

(a) Transfer of Patent Rights to a Successor Contractor

As consideration for Contractor's commitment to expend private monies in its privately-funded technology transfer effort under this contract at a level at least commensurate with such expenditures under its prior contract, including at least one million dollars (\$1,000,000) per year for activities under the privately-funded technology transfer program, which includes the filing and prosecution of at least 25 patent applications per year, the parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions which were elected to be pursued under Contractor's privately-funded technology transfer program, and to the licenses and royalties generated therefrom:

- (1) As to any Subject Invention for which Contractor has expended private monies in excess of at least twice the cost of obtaining a U.S. patent thereon under Paragraph (b)(1) below, for any license or other commercialization agreement (hereinafter "agreement") executed prior to termination or expiration of this Contract for such Subject Invention, the distribution of net income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to contract termination or expiration and shall continue for the duration of such agreement. As set forth in paragraph (d) below, fifty-one percent (51%) of such net income shall go to the Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the Contractor for use in accordance with 35 USC Section 200 et seq. Title to, and administration of agreements related to, such subject invention shall remain with the Contractor.
- (2) As to any Subject Invention for which Contractor has expended private monies in excess of patenting costs as set forth in (1) above, for any assignment executed to a party other than an affiliate of the Contractor prior to termination or expiration of this Contract for a Subject Invention, the distribution of net income from royalties, equity, or any other consideration received or to be received under such assignment shall remain as prior to contract termination or expiration and shall continue for the duration of such assignment. As set forth in paragraph (d)

below, fifty-one percent (51%) of such net income shall go to the successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a successor Contractor, to such other entity designated by the Government, and forty-nine percent (49%) may be retained by the Contractor for use in accordance with 35 U.S.C. Section 200 et seq. Title to and administration of agreements related to, such subject invention shall remain with the assignee.

(3)

- (i) Where Contractor has elected to retain title to a Subject Invention, under the Clause entitled "Patent Rights—Nonprofit Management and Operating Contractors", and where no license, assignment or other commercialization agreement has yet been executed, and private expenditures beyond patenting expenses as set forth in (1) above have not been made by Contractor, the Contractor and Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to the Subject Invention by the Contractor or its affiliate or transfer of such title to DOE or the successor Contractor operator of the Facility or any other party designated by DOE. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE's need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology. Regardless of whether such negotiations are completed, the Government shall have the right to require the transfer of any such title to any Subject Invention to which title has been retained by the Contractor or an affiliate and the Parties shall thereafter complete negotiations regarding appropriate compensation.
- (ii) Where Contractor has elected to retain title to a Subject Invention under the Clause entitled "Patent Rights—Nonprofit Management and Operating Contractors", and Contractor has made private expenditures as set forth in (1) above beyond patenting expenses, the Contractor and Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to the Subject Invention by the Contractor or its affiliate or transfer of such title to DOE or the successor Contractor operator of the Facility. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, including that set forth in (1) above, potential commercial use, assumption of patent related liabilities, effective technology transfer, the needs of DOE for continued operation of the Facility, and the need to market the technology. Regardless of whether such negotiations are completed, the Contractor shall have the right to retain title to, and administration of agreements related to, Subject Inventions.

- (4) Where title to a Subject Invention is to be retained by the Contractor or its affiliate under paragraph (3) above subsequent to termination or expiration of the contract, the Contractor and the Government shall enter negotiations prior to such termination or expiration, with respect to net royalties or income generated from

assignments or licenses of such Subject Inventions effected subsequent to termination or expiration of the contract and the distribution thereof between the Contractor and a Successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a Successor Contractor then to such other entity designated by the Government. Such negotiations shall consider the equities of the parties and other conditions as set forth in this clause, paragraph (a)(3) above. However, the net royalty or income distribution to the Facility for use by a Successor Contractor or other Government designated entity shall in no event be less than twenty-five percent (25%) of such net royalties or income.

- (5) For any subject invention to which Contractor maintains title or administration under Paragraphs (1)-(3) above, Contractor agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor to practice such subject invention in the form of CRADAs, Work For Others agreements, licenses or other appropriate agreements, in order to fulfill the missions and programs of the Facility. It is the intention of Contractor to enable the successor Contractor to continue operation of the Facility, including the Facility's technology transfer program. In any event, the successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.

(b) Costs

- (1) Except as otherwise specified in the clause titled, Technology Transfer Mission, as allowable costs for conducting activities pursuant to provision of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs after the Contractor elects to retain title. Should the Contractor elect to retain title after allowable costs have been incurred with respect to the patenting of a particular invention, such costs shall be repaid in accordance with paragraphs (b)(3) and (b)(4) below, as if such costs had originally been incurred through the expenditure of indirect cost monies pursuant to subparagraph (b)(2) below.
- (2) For a four-year period from October 1, 1988, the effective date of Contract Modification M140, an amount not to exceed \$200,000/year was agreed to be allowable as an indirect cost for activities such as the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs.
- (3) To the extent that the Contractor utilized indirect cost monies pursuant to paragraph (b)(2) above, the annualized balance of royalties or income (net) being returned to and used at the Facility shall be in the ratio of expenditure of allowable funds pursuant to paragraph (b)(2) above to the sum of such expended allowable funds plus any private Contractor funds for invention costs set forth in the clause titled, Patent Rights-Nonprofit Management and Operations Contractors, paragraph (k)(3). However, the annualized net royalties or income being returned to the Facility for use at the Facility shall in no event be less than fifty-one percent (51%) of the balance of royalties or income earned.

- (4) To the extent that the Contractor utilized indirect cost monies pursuant to this clause, paragraph (b)(2) above, it shall provide reimbursement thereof to the general operating fund of the Facility when royalties or income from all invention activities set forth in the clause titled, Patent Rights-Nonprofit Management and Operating Contractors, paragraph (k)(3) become self sustaining. Such reimbursement shall be on an annualized basis and shall be equal to twenty percent (20%) of the balance of net royalties or income prior to distribution to the Contractor.

Further, where the Contractor assigns or conveys title to an invention to other than an affiliate of the Contractor, the Contractor shall reimburse the general operating fund of the Facility for any indirect cost monies utilized with respect to such invention pursuant to paragraph (b)(2) above. Such reimbursement shall be made out of any net royalties or income from Subject Inventions (whether or not from the Subject Invention conveyed) before such royalties are used for any other purpose.

(c) Liability of the Government

- (1) It is understood that the activities of the Contractor under this clause are activities under the Contract and subject to the clause titled, Insurance--Litigation and Claims.
- (2) The Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.
- (3) The Contractor shall include in all licensing agreements and in any assignment of title the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:
 - (i) "This agreement is entered into by Battelle Memorial Institute (BMI) in its private capacity. It is understood and agreed that the U.S. Government is not a party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this agreement or the subject matter licensed assigned)."
 - (ii) "Nothing in this Agreement shall be deemed to be a representation or warranty by BMI or the U.S. Government of the validity of any of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by BMI. Neither the U.S. Government nor BMI nor any affiliated company of BMI shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:

- (A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;
- (B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by BMI; or
- (C) Any advertising or other promotional activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government, BMI, and any affiliated company of BMI harmless in the event the U.S. Government, BMI, or any affiliated company of BMI is held liable.

BMI represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert."

(d) Distribution of net income

In the event Contractor engages in a Contractor-funded technology transfer program under Clause I-99, such that private Contractor funds are utilized for technology transfer after Contractor elects to retain title to a Subject Invention, net income from such Contractor-funded technology transfer program shall be distributed as follows:

- (1) Fifty-one percent (51%) of net income shall be used at the Facility for scientific research, development and education consistent with the research and development mission and objectives of the Facility. Forty-nine percent (49%) of such net income may be used by the Contractor at a location other than the Facility if such use is for scientific research, development, and education consistent with the research and development mission and objectives of the Facility in accordance with 35 USC Section 200 et seq.
- (2) "Net income" is defined as that amount remaining after the expense of patenting costs, licensing and marketing costs, payments to inventors, and other expenses incidental to the administration of subject inventions is deducted from gross income received.

(e) Equity Plan

It is the intent of the Government and the Contractor that the Contractor shall, in its discretion, take reasonable and prudent actions from both a commercial and stewardship of the Facility's technology transfer perspective related to the ownership of equity received from third parties under this Contract. Contractor shall submit to the Contracting Officer a plan which shall set forth principles for the Contractor's acquisition, retention and disposition of equity received from third parties as consideration for licenses or assignments granted to such third party. Such plan shall consider, at a minimum,

- (1) the manner in which the Contractor shall acquire such equity in a third party, including the manner in which Contractor shall apportion capital contributions to such third party between the relative value of private Contractor contributions and the value of contributions representing a license under a Subject Invention;

- (2) the manner in which the Contractor shall hold such equity, given that the Government has an undivided 51% interest in that portion of such equity representing the value of contributions resulting from a license to such Subject Invention;
 - (3) the manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor; and
 - (4) the manner in which Contractor's inventors are compensated.
- (f) The Contractor shall indicate whether a Subject Invention will be pursued under its publicly-funded technology transfer program or its privately-funded technology transfer program within three months after the Subject Invention is reported to the Contractor, unless otherwise agreed in writing by the Patent Counsel.
- (g) In its privately-funded technology transfer program, the Contractor shall be substantially guided by the principles of U.S. Competitiveness and Fairness of Opportunity as set forth herein.

H-10 COSTS ASSOCIATED WITH RETALIATORY AND DISCRIMINATORY
EMPLOYEE ACTIONS

(a) Definitions.

(1) ADVERSE DETERMINATION means:

- (i) A recommended decision under 29 C.F.R. Part 24 by an Administrative Law Judge that the Contractor has violated the employee protection provisions of the statutes for which the Secretary of Labor has been assigned responsibility;
- (ii) An initial agency decision under 10 C.F.R. 708.10 that the Contractor has engaged in conduct prohibited by 10 C.F.R. 708.5; and
- (iii) A decision against the Contractor by the Secretary under 41 U.S.C. Section 265 (c)(1).

- (2) COSTS include any costs or expenses relating to an employee action, as defined below, including but not limited to back pay, damages or other award in the form of relief to the employee; administrative and clerical expenses; the cost of legal services whether provided by the Contractor or procured from outside sources; the costs of services of accountants, consultants or other experts retained by the Contractor; all elements of related compensation, costs and expenses of employees, officers and directors; and any similar costs incurred after the commencement of the employee action.
- (3) RETALIATORY OR DISCRIMINATORY ACTS mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by a Contractor, as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or as a result of

the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a), and for which the employee has formally proceeded with a timely and accepted "employee action".

- (4) **EMPLOYEE ACTION** means an action brought by an employee of the Contractor under 29 C.F.R Part 24, 10 C.F.R. Part 708, or 41 U.S.C. Section 265, or an action filed in Federal or state court for redress of discrimination or discriminatory action by a Contractor based on activities that would be actionable under 29 CFR Part 24, 10 C.F.R. Part 708, or 41 U.S.C. Section 265. For an "employee action" commenced by a collectively bargained-for employee who has not first attempted in good faith to pursue available remedies under the collective bargaining agreement, the Contracting Officer will make a determination as to whether or not the provisions of this clause apply. That determination will be based upon the underlying circumstances leading to the action as well as the employee's basis for not pursuing the matter under the collective bargaining agreement.
- (5) **LITIGATION COSTS** include attorney, consultant, and expert witness fees, but exclude the costs of settlement, judgment, or Secretarial Order.
- (b) **SEGREGATION OF COSTS.** All litigation costs incurred in the investigation and defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.
- (c) **ALLOWABILITY OF LITIGATION AND OTHER COSTS.**
 - (1) Litigation costs, including the use of alternative dispute resolution (ADR), and settlement costs incurred in connection with an employee action under this clause are allowable if the employee action is resolved prior to an adverse determination, provided such costs are otherwise allowable under the clauses entitled Insurance--Litigation and Claims and Cost Prohibitions Related to Legal and Other Proceedings, and other relevant provisions of this contract. All litigation costs directly associated with alternative dispute resolution are allowable. Any recommended or required payments or settlements resulting from ADR would be subject to approval of the Contracting Officer
 - (2) In actions in which an adverse determination is issued, litigation, settlement, and judgment costs, as well as the cost of complying with any Secretarial Order, are not allowable, unless:
 - (i) The Contracting Officer determines that the Contractor substantially prevailed in a proceeding resulting in an adverse determination or subsequent to the adverse determination at which a final decision is rendered in the action; or
 - (ii) The Contracting Officer has, on the basis that it is in the best interest of the Government, approved the Contractor's request to proceed with defense of an action rather than entering into a settlement with the

employee or accepting an adverse determination or other interim decision prior to a final decision.

- (3) Subsequent to an adverse determination, litigation costs, as well as costs associated with any interim relief granted, may not be paid from contract funds; provided, however, that the Contracting Officer may, in appropriate circumstances, provide for conditional payment from contract funds upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs, plus interest, if they are subsequently determined to be unallowable. Litigation costs directly associated with alternative dispute resolution, subsequent to an adverse determination, are presumed to be allowable and may be paid from contract funds if the Contractor has provided advance notice to the Contracting Officer of the proposed ADR effort and provided the Contracting Officer at least five working days to review and respond to the notice. The Contracting Officer may notify Contractor that such costs will not be presumed allowable and may not be paid from contract funds. If said notice is made within the five working days, then all such costs shall not be paid from contract funds; if said notice is provided after the five working days, then all such costs incurred after receipt of said notice will be paid from Contractor's separate funds.
- (4) Litigation costs incurred to defend an appeal by the employee from an interim or final decision in the Contractor's favor are allowable provided they are otherwise allowable under the clauses entitled Insurance--Litigation and Claims and Costs Prohibitions Related to Legal and Other Proceedings, and other relevant provision of the contract. The reversal of an interim or final decision in the Contractor's favor will not impact the initial allowability determination of the Contractor's litigation costs.
- (d) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under Section 2 of the Major Fraud Act of 1988 as amended. (See the clause entitled Cost Prohibitions Related to Legal and Other Proceedings.)

H-11 PERFORMANCE MEASURE REVIEW

- (a) The Parties agree to review the performance measures (critical outcomes, objectives, performance indicators and expected levels of performance) contained in Appendix F annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the critical outcomes, objectives, performance indicators and expected levels of performance for the next period, the Contracting Officer shall have the right to establish reasonable new critical outcomes, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing critical outcomes, objectives, performance indicators and expected levels of performance, subject to the provisions of paragraph (b) below. It is expected that the critical outcomes, objectives, performance indicators and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based management system.
- (b) In the event the Contracting Officer decides or Fee Determination Official (FDO) decides to exercise the right set forth in paragraph (a) above, he/she will notify the Contractor, in

writing, of the intended decision and that a written decision will be issued to the Contractor within ten (10) working days. Provided, however, that the Parties agree that the following resolution procedure will be available to the Contractor.

- (1) Within five (5) working days of receipt of the notification, a Corporate Officer of the Contractor may request that a Resolution Council (RC), consisting of a Corporate Officer of the Contractor, the Laboratory Director or designee, the DOE-RL Assistant Manager for Science and Technology or designee, a representative of the cognizant DOE HQ office, the DOE-RL Contracting Officer, and the Manager, Richland Operations Office, consider the Contractor's objections. The RC shall have flexibility in determining the processes and procedures to be utilized and will take all steps necessary to act within twenty (20) working days, or such later period as the Manager, Richland Operations Office, may, in writing, authorize, in order to effect an alternative, if any, to the subject action. The RC may utilize the expertise of knowledgeable staff personnel or other individuals whose participation will assist in the resolution of relevant issues.
 - (2) If the RC is unable to develop an alternative acceptable to both DOE and the Contractor within the time frame established in subparagraph (b)(1), the Manager, Richland Operations Office, shall, at his sole discretion, issue a unilateral decision as to the action to be taken under this clause.
- (c) Neither the decision of the Contracting Officer to exercise the right set forth in paragraph (a) above nor any decision of the Manager, Richland Operations Office, under paragraph (b) above, shall constitute a "claim" as defined in the clause titled, Disputes, of this contract or the Contract Disputes Act of 1978, 41 U.S.C. Section 601 et seq.

H-12 USE OF OBJECTIVE STANDARDS OF PERFORMANCE, SELF ASSESSMENT AND PERFORMANCE EVALUATION

- (a) The Parties agree that the Contractor will utilize a performance-based system for Laboratory management. The performance-based management system will include the use of clear and reasonable objective performance indicators agreed to, in advance, as standards against which the Contractor's overall performance of scientific, technical, operational, and/or managerial obligations under this Contract will be assessed.
- (b) The Parties agree to utilize a specially designated process described in Appendix F to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process, described in Appendix F, will be reviewed annually and modified, if necessary, by agreement of the Parties.
- (c) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means by which the Contractor will evaluate its compliance with the contract Statement of Work and performance indicators identified within Section J, Appendix F against which the Contractor's overall performance of obligations under the Contract will be determined.
- (d) DOE, as a part of its responsibility for oversight, evaluation and information exchange, is responsible for providing programmatic and other appraisals and reviews of the

Laboratory's and the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract.

- (e) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance hereunder to the Contractor which shall be based upon the process described in Appendix F and the Contracting Officer's evaluation of the Contractor's self-assessment.

H-13 CARE OF LABORATORY ANIMALS

- (a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.
- (b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.
- (c) In the care of any animals used or intended for use in the performance of this contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the American Association for Accreditation of Laboratory Animal Care, Inc. (AAALAC), or (iii) has a DOE Assurance Plan Number.

H-14 LABORATORY FACILITIES

Laboratory Facilities. DOE agrees to continue to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the laboratory facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Laboratory Site in Richland, Washington; and
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

H-15 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES

[This clause only applies to work performed under this contract and does not apply to work performed under contract DE-AC06-76RL01831.]

- (a) Subject to the prior written approval of the Contracting Officer, and in compliance with applicable requirements imposed by the Contracting Officer pursuant to the clause entitled, Laws, Regulations and DOE Directives, the Contractor may, through the Laboratory, perform non-DOE activities which are consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, involving the use of Laboratory equipment, facilities, or personnel. Such proposed work may be for non-Federal entities or other Federal agencies. The request for such approval shall set forth, in detail, the nature of the outside work to be performed, the Laboratory equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being guided, among other factors, by the current or future needs of DOE's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside work. Primary considerations in approving such work are that the proposed work will not place the Laboratory in direct competition with domestic non-Federal entities, will not adversely impact execution of the Laboratory's assigned programs, and will not create a potentially detrimental future burden on commitment of DOE resources. If the Contracting Officer approves such a request, the Contractor and DOE shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside work; provided, however, that DOE may contribute the use of certain equipment, facilities, or personnel to the Laboratory for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved by DOE, all clauses of this contract shall be deemed to be applicable to the performance of such work. This clause shall not be construed as amending or superseding the requirements of Section C, Statement of Work.
- (b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in response to the requirements of such solicitations unless the Contractor has obtained written approval of the Contracting Officer.

H-16 PATENT INDEMNITY

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from Contractor's subcontractors for any contract work subcontracted on the terms and in accordance with DOE Procurement Regulations.

H-17 LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for

attempting to reach mutual understanding in advance of the time that action needs to be taken.

- (b) Institutional Planning. It is the intent of the Parties to develop annually an Institutional Plan covering a five-year period. Development of the Institutional Plan is the strategic planning process by which the Parties through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The Institutional Plan approved by DOE provides guidance to the Laboratory for long-range planning of programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.
- (c) Work Authorization
 - (1) To carry out DOE's program of work, the Contractor will submit, in writing, to the DOE, work program documents covering work it believes it can and should pursue hereunder in the best interest of scientific progress.
 - (2) Work programs shall be developed and approved in accordance with DOE's system for preparing, budgeting, and authorizing work, and shall constitute work to be performed under this contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. Subject to the other provisions of this contract, and except as the parties may otherwise agree as part of an agreed work program for basic science, additions to, deletions from, and other changes in the agreed work program for basic science, within the general scope thereof and not constituting major changes in the agreed work program, may be made by the Contractor as and when it appears to the Contractor to be in the best interest of scientific and technical objectives of the agreed work program to do so.

H-18 COMMUNICATIONS AND TRUST

- (a) Public Affairs and News Releases
 - (1) The Parties recognize the importance of coordination between the parties with regard to areas covered in this clause so as to achieve public policy objectives important to the nation. As a federal agency, DOE must assure that news releases which describe its policies and procedures as related to the operation of its national scientific laboratories do so on an accurate and timely basis. Accordingly, the parties recognize the importance of advanced coordination of significant news media activities, including new releases, major announcements and significant interactions with national news media.
 - (2) Consistent with these principles, the Contractor and DOE will exercise diligent efforts to inform each other in advance of significant public affairs events or other major activities. When such advance exchange is not possible operationally, each party shall promptly furnish the released information to the other party concurrent with its release.
 - (3) The Contractor shall not release information attributed directly to DOE or which purports to represent established DOE policy without advance concurrence of

DOE. Nothing in this clause shall be construed so as to limit the right of the Contractor to publicize the results of its scientific research, consistent with the advance coordination principles outlined above.

- (4) In all public releases of information in communication products related to the laboratory, identification of the facility as a Department of Energy facility shall be made prominently in the communication product involved. This identification should include a statement that the laboratory is a DOE facility which is operated by the Contractor under a performance based management contract. The inclusion of such a standard statement does not replace, however, the requirement for prominent identification of the laboratory as a DOE facility in an appropriate editorial context in the communications product.
- (5) Nothing in this clause is intended to interfere with requirements associated with information which has received national security classification.

(b) Public Involvement

- (1) The Contractor agrees to establish community relations and/or public involvement programs and initiatives appropriate to the laboratory activities involved and the stakeholder interests affected.
- (2) DOE recognizes such activities as an integral component of Contractor management responsibilities in the execution of the contract. The Parties recognize their mutual responsibilities to coordinate public involvement activities and to coordinate all related external communications consistent with the principles outlined in paragraph (a), Public Affairs and News Releases, above.
- (3) In carrying out laboratory public involvement activities, the Contractor agrees that it will make no statements contrary to DOE policy or enter into any commitments with external parties regarding departmental actions without DOE concurrence.

H-19 CAP ON LIABILITY

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses (including any related provision in the clause titled, Allowable Costs and Fees):
 - (1) The clause titled, Costs Associated with Retaliatory and Discriminatory Employee Actions;
 - (2) The clause titled, Allowable Costs and Fee, (e)(17)(vi);
 - (3) The clause titled, Property, (f)(1)(i)(C);
 - (4) The clause titled, Insurance – Litigation and Claims, (h), with respect to prudent business judgement only;

- (5) The clause titled, Insurance – Litigation and Claims, (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled, Definitions; and
- (6) The clause titled, Cost Prohibitions Related to Legal and Other Proceedings, with respect to defense costs only in those circumstances where the terms of the Major Fraud Act (41 U.S.C. 256(k)) do not prohibit the reimbursement of costs under any circumstance.

These obligations shall apply on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses identified above. Provided, further, that in the event the Contractor's act or failure to act overlaps more than one period, then the applicable cap will be the cap for the last period in which the Contractor's act or failure to act occurred.

- (b) The liability cap shall be negotiated for each fiscal year. Except as otherwise provided in paragraph (a) above, and notwithstanding any other provision of this contract to the contrary, if the liability cap is reached for any fiscal year, the Contractor shall have no further responsibilities for the liabilities it has assumed pursuant to (a) above and all cost in excess of the liability cap for said liabilities shall be borne by the Government.
- (c) For fiscal year 2002, the Contractor will be responsible for the first \$195,000. The next \$4,435,000 will be shared by the Contractor and the Government on a fifty-fifty per dollar basis. Accordingly, the total cap shall be \$4,630,000 and the Contractor's share of said total cap shall be \$2,412,500. The amount of the cap and other limitations for fiscal year 2003 will be negotiated along with the fee(s) in accordance with other provisions of the contract. If the Parties cannot agree on a cap for any subsequent fiscal years, then the liability cap will remain at the same rate as for the previous period.
- (d) This provision shall survive termination of the contract, and for claims made thereafter against the Contractor as described in the clause enumerated in paragraph (a), and the appropriate cap shall be determined in accordance with paragraph (c) above.

H-20 ALTERNATIVE DISPUTES RESOLUTION

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the Contracting Officer's level, without litigation. Both parties agree to explore all reasonable avenues for a negotiated settlement in order to avoid disputes. When all possibilities for negotiation have failed, the parties will endeavor to move the potential dispute to Alternate Disputes Resolution (ADR). Either party is required to provide a written explanation to the other party for rejecting a request for ADR proceedings, citing the specific reasons that ADR procedures are inappropriate for resolution of the dispute. If the parties are unable to satisfactorily resolve the dispute using ADR or cannot agree on its application, they resume the formal process authorized in clause in this contract entitled "Disputes."

H-21 RETRAINING FOR DISPLACED EMPLOYEES

- (a) Salaried and hourly employees whose jobs are likely to be eliminated due to changes in the contractor's scope of work, budgetary reductions, or efficiencies in performing the

mission who are covered by the terms of section 3161 may be offered opportunities for retraining. Retraining programs may be designed to provide occupational skills which are in demand by the Contractor or by other employers locally, regionally, or nationally, as appropriate. Tuition payments for courses to qualify displaced employees for outside employment may be approved by the Contractor. Retraining for outside employment may be conducted during working hours under programs approved by DOE.

- (b) When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department of Energy pursuant to section 3161, the Contractor shall comply with the DOE approved Hanford Site Work Force Restructuring Plan, as amended. This plan may prescribe funding amounts for retraining eligible workers for new Contractor jobs in environmental cleanup, and may prescribe funding amounts and procedures for providing displaced workers with tuition reimbursement for training or education that will assist the transition to new careers.

H-22 TRANSFER-RELOCATION ALLOWANCE

- (a) An allowance for transfers and relocations accomplished pursuant to section 3161 may be reimbursed with an outbound and an inbound allowance not to exceed the employee's receipted expenses up to 4-1/3 weeks salary, except that a flat amount not to exceed one thousand dollars (\$1,000.00) may be allowed in lieu of receipted expenses.
- (b) When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department pursuant to section 3161, the Contractor shall comply with the DOE approved Hanford Site Work Force Restructuring Plan, as amended. This plan may prescribe funding amounts for relocating an eligible employee to another company at another DOE site when the employee does not qualify for relocation assistance under the hiring contractor's policies.

H-23 LABOR RELATIONS

- (a) The Contractor will respect the rights of employees (1) to organize, form, join, or assist labor organizations; bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining, or (2) to refrain from such activities.
- (b) To the extent required by law, the Contractor shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining obligations.

H-24 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. Accordingly, except as otherwise approved, in writing, by the Contracting Officer, the Contractor will insert the appropriate "Service Contract Act" article and applicable wage determinations in subcontracts the principal purpose of which is to furnish services through the use of service employees. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts.

H-25 ECONOMIC TRANSITION AND OUTSOURCING

- (a) The Contractor shall be responsible for the performance of the work under this contract in a manner that helps the community establish a stable economic base over the long term.

Performance of the Contractor with respect to the obligations agreed to in this Clause will be evaluated through appropriate indicators, both qualitative and quantitative, within the Laboratory Critical Outcomes, developed for each year of the contract.

- (b) The Contractor shall work with DOE and the Tri-Cities to create a local economy that is substantially less dependent on a DOE Hanford payroll.
- (c) The Contractor will pursue the expansion of its public and private contract research business.
- (d) The Contractor will create or help form, on average, 10 new businesses each year over the five-year term of the contract extension.
- (e) In collaboration with other site contractors, the Contractor shall implement technology transfer and intellectual property management programs to stimulate commercialization, privatization, and entrepreneurship that promotes diversification of the Tri-City economy.
- (f) Incentives shall be the cornerstone of the contractor's technology transfer program. Inventors may benefit through royalty sharing, equity ownership in license-based new businesses or the opportunity to start a new business.
- (g) The Contractor is encouraged to invest corporate resources in staff, facilities, and equipment to ensure that they remain at the leading edge of technology.
- (h) The Contractor will form partnerships with local universities, colleges, and schools to help train the next generation of scientists, engineers, and managers.
- (i) The Contractor will encourage staff to contribute time and will contribute corporate funds to the arts, culture, health, and human services of the Tri-City community in order to ensure the community's continued high quality of life.
- (j) The Contractor will encourage P-Card purchases from local vendors where there is added value.
- (k) The Contractor will encourage procurement and subcontracts that are awarded to local and regional businesses wherever added value is the result (i.e. delivery, etc.).
- (l) The Contractor will work to create a Tri-Cities capital network that will provide venture capital funds for local business investment.

H-26 HANFORD OCCUPATIONAL HEALTH PROCESS

The Hanford Occupational Health Process (HOHP) is the Hanford Site's standard for a hazard based approach to occupational medical qualification, medical monitoring, and medical surveillance activities. The laboratory shall implement the HOHP for all laboratory and subcontractor personnel performing Hanford work.

H-27 OCCUPATIONAL HEALTH SERVICES

Occupational Health Services are provided to the Hanford site by the Onsite Medical provider (currently the Hanford Environmental Health Foundation (HEHF)). The Contractor shall obtain for itself and shall require subcontractors, as directed by the Contracting Officer, performing work on the Hanford site to obtain the following services from the Onsite Medical provider: occupational medical evaluations including return to work and fitness for duty evaluations, pre-placement evaluations and work restriction reviews, medical surveillance evaluations, health care centers, case management for plant injuries, and medical records services.

H-28 LIFE CYCLE ASSET MANAGEMENT

(a) Life Cycle Asset Management.

- (1) In the performance of this contract, the Contractor shall establish, maintain, and use a life cycle asset management system that meets the requirements as specified below. The Contractor shall provide the Contracting Officer with a detailed written description of the proposed system for approval within 180 days after contract award.
- (2) In furtherance of the Contractor's responsibilities under Section C to operate and manage the Laboratory, the life-cycle asset management system to be developed by the Contractor shall address the following requirements:
 - (i) The process for physical asset acquisition shall be an integrated, systematic approach that shall ensure, but shall not be limited to, the following:
 - (A) Support the use of the Hanford comprehensive land-use process.
 - (B) Use of a process tool, such as value engineering, to improve efficiency and cost-effectiveness when analyzing physical asset acquisition.
 - (C) Specification of the appropriate state, regional, or national building codes to which physical assets shall be designed and constructed.
 - (D) Consideration of maintainability, operability, life-cycle costs, and configuration integrity in designs and acquisitions.
 - (E) Consideration of current mission needs and an appropriate scope.
 - (F) A project management system based on effective management practices that is sufficiently flexible to allow for the size and complexity of the project.
 - (ii) The process for the operation and maintenance of assets shall ensure, as a minimum, the following:

- (A) The identification, inventory, and periodic assessment of the condition of physical assets in the maintenance program.
- (B) The establishment of requirements, budget, and a work management system to maintain physical assets in a condition suitable for their intended use.
 - 1. The preventive, predictive, and corrective maintenance to ensure physical asset availability for planned use and/or proper disposition.
 - 2. The management of backlogs associated with maintenance, repair, and capital improvements.
- (C) Establishment, implementation, and maintenance of a configuration management (CM) program, using a systems engineering approach, to obtain and maintain consistency among requirements, configuration, functionality, and associated documentation of configuration items, particularly as changes are being made. The CM program shall:
 - 1. be based on the criteria of this section, the terms and conditions of this contract, and commercial national standards or other established models (e.g., DOE-STD-1073-93, LCAM Good Practice Guides, etc.)
 - 2. be defined and documented in CM policies and procedures;
 - 3. require establishment and maintenance of concepts, standard terminology, and standard definitions for the CM Program;
 - 4. require training to applicable Laboratory management and staff on the CM Program;
 - 5. require evaluation of past assessments and performance of new assessments, as needed, to determine the strengths and weaknesses of existing CM processes, procedures and controls. Where weaknesses are found, the responsible organization shall develop and implement corrective actions;
 - 6. require identification and control of configuration items. Particular emphasis shall be placed on configuration items essential to safety, environmental protection and mission accomplishment;
 - 7. be based on a graded approach so as to determine the appropriate resource levels needed and the quantity and type of configuration items which are selected for

control. The graded approach and grading criteria shall be defined. Gradation for elements of the CM program shall be documented, defensible, and traceable.

- (D) The efficient and effective management and use of energy and utilities.
- (E) A method for the prioritization of infrastructure requirements.
- (iii) The process for the disposition of physical assets shall ensure, as a minimum, the following:
 - (A) The use of a signed agreement to document items and conditions when transferring assets between DOE program offices.
 - (B) A method of timely identification and reporting of surplus assets.
 - (C) In addition, for nuclear facilities, as a minimum the following apply:
 - 1. The development of a decommissioning turnover plan.
 - 2. The development of a decontamination plan if appropriate for the facility.
 - 3. The completion of a deactivation readiness review.
- (b) Subcontract requirements. To the extent the Contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

H-29 TOTAL AVAILABLE FEE

- (a) Total Available Fee. A total available performance-based fee determined in accordance with the provisions of this clause and Appendix E, "Standards of Performance-Based Fee" of Section J, is available for payment in accordance with this clause, H-30 Conditional Payment of Fee, I-71 "Payments and Advances," and Appendix E of Section J of this contract.
- (b) Fee Payments. Payment of fee will be made as follows.
 - (1) Monthly Provisional Fee Payments. The Contractor may draw up to one twelfth (1/12) of 90% of the total available fee for the fiscal year on the first day of each month, unless otherwise instructed in writing by the Contracting Officer.
 - (2) End of Year Provisional Fee Payment. Concurrent with the submittal to DOE of the Contractor's final self assessment report for the fiscal year, and using the ratings contained in this report, the Contractor will provide to DOE a proposed Expected Fiscal Year Fee, with said Expected Fiscal Year Fee calculated as follows.

95% of the performance-based fee pool estimated by the Contractor to have been earned under the performance-based fee schedules in Appendix E.

The Contractor may make a draw not to exceed the Expected Fiscal Year Fee less the cumulative provisional fee drawn to date for the fiscal year fifteen (15) calendar days after submittal of the fee calculation to DOE, unless otherwise instructed in writing by the Contracting Officer.

- (3) **Final Fee Payment.** The Contractor will submit a Final Fee Payment Request pursuant to subparagraph (f) of this clause to DOE after the end of the fiscal year. Any remaining fee will be payable to the Contractor or the Government, as the case may be, under the provisions of that subparagraph.
- (c) **Fee Negotiations.** Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the Contracting Officer and the Contractor shall enter into negotiation of the critical outcomes, to include the objectives, and individual performance indicators or groups of indicators that will determine (as specified within Section J, Appendix E of this contract) if the critical outcome is met; the amount of fee; and the allocation of fee. In the event the parties fail to agree on the amount of fee, the Contracting Officer must make a unilateral decision, subject to appeal under the clause of this contract entitled, Disputes. In the event the parties fail to agree on the critical outcomes and/or individual performance indicators subject to fee or on the allocation of fee, it is agreed that the Contracting Officer shall make a unilateral decision. It is herein agreed the total available fee amount shall be allocated to a 12-month cycle composed of one evaluation period with a mid-year evaluation.
- (d) **Determination of Total Available Fee Amount Earned.**
 - (1) The Government shall, at the conclusion of each specified evaluation period, evaluate and/or validate the Contractor's performance of all performance-based critical outcomes during the evaluation period and determine the total available fee amount earned. At the Contracting Officer's unilateral discretion, evaluation/validation of fee indicators may occur at the scheduled completion of the requirements.
 - (2) The Government Fee Determination Official (FDO) will be the Manager, DOE Richland Operations Office. The Contractor agrees that the Contracting Officer or FDO shall make a unilateral determination as to the amount of total available fee earned.
 - (3) The evaluation of the Contractor performance shall be in accordance with Appendix E "Standards of Performance-Based Fee" of Section J. The Contractor shall be promptly advised in writing of the determination, and the reasons why the total available fee amount was or was not earned.
 - (4) Fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (e) **Standards of Performance-Based Fee.** To the extent not set forth elsewhere in the contract:

- (1) The Standards of Performance-Based Fee, Appendix E of Section J, shall describe the critical outcomes that are subject to fee as well as the amount and allocation of fee to such outcomes. The Standards shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined. It shall also describe specific detail on objectives, performance indicators, and expected levels of performance, which will be used to determine if and to what extent each critical outcome is met. The Objective Standards of Performance Fee shall be mutually agreed to between the Government and the Contractor for each evaluation period. In the event the parties cannot reach agreement, the Contracting Officer shall unilaterally establish the evaluation areas and individual requirements subject to fee, the amount of fee, and allocation of fee to such evaluation areas or individual requirements.
- (2) The Standards of Performance-Based Fee may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the Contractor:
 - (i) of such unilateral changes at least ninety calendar days prior to the end of affected evaluation period and at least thirty calendar days prior to the effective date;
 - (ii) of bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
 - (iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the period.
- (f) Schedule for total available fee earned determinations. The Contracting Officer or FDO shall issue the Determination of Final Fee Earned within thirty calendar days after receipt by the Contracting Officer of the Contractor's Final Fee Payment Request which correctly identifies the fee claim(s), corresponding contract language, along with the internally validated substantiating information. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

H-30 CONDITIONAL PAYMENT OF FEE

- (a) In order for the Contractor to receive all otherwise earned fee under the contract in an evaluation period, the contractor must meet the minimum requirements in paragraphs (c)(1) through (c)(4) of this clause. If the Contractor does not meet the minimum requirements, the Contracting Officer or Government Fee Determination Official (FDO) may reduce the evaluation period's otherwise earned fee.

- (b) Any determination under this clause shall be the unilateral right of the Contracting Officer or the FDO. This clause does not apply to any base fee (fixed), if any, included in the contract.
- (c) Minimum requirements.
- (1) Environmental, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE (Operations Office Manager) approval of, and implement a comprehensive Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety, and Health Into Work Planning and Execution." The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the program during the evaluation period, the Contracting Officer or FDO may reduce, in whole or part, any otherwise earned fee for the evaluation period.
 - (2) Catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality; serious workplace related injury or illness to one or more employees; loss of control over classified or special nuclear material; or an event that causes significant damage to the environment) the Contracting Officer or FDO, at his/her sole discretion, may reduce any otherwise earned fee in whole or in part. In determining any diminution of fee resulting from a catastrophic event, the Contracting Officer or FDO, will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the Contractor or other sources. This clause is in addition to any other remedies available to the Government that may be contained in this contract.
 - (3) Specified level of performance. The minimally acceptable level of performance (expected performance) associated with any fee shall be set forth within Appendix E of this contract. The Contractor, at a minimum, must perform at the level of expected performance set forth, for each performance-based outcome. The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Contracting Officer or the FDO. To the extent that the Contractor fails to achieve the stipulated expected performance levels, during the evaluation period, the otherwise overall earned fee may be reduced by the Contracting Officer or FDO as stipulated elsewhere within this clause. The Contracting Officer or FDO may also consider any information available to him/her which relates to the Contractor's performance of all other contract requirements set forth in the Statement of Work, Work Authorization Directive, or similar document.
 - (4) Cost performance.
 - (i) In the case of performance-based fee, the individual requirement or group of requirements must be performed within the cost specified for it or them in the contract/modification which incorporates the effort. Further, the performance of requirements which are fee bearing must not result in an adverse impact to the cost of performance of all other unrelated requirements.

- (ii) In the case where the cost associated with the performance of requirements has a specific cost incentive associated with it, the Contractor's performance of such requirements shall not result in an adverse impact to the cost of performance of all other unrelated requirements.
 - (iii) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Contracting Officer or FDO. To the extent that the Contractor fails to achieve the above stipulated cost performance levels, the Contracting Officer or FDO may reduce any otherwise earned fee for the evaluation period, in whole or in part.
- (d) If, in the performance of this contract, the Contractor demonstrates exceptional performance, over and above expected levels, within areas which may be outside of the parameters identified within Appendix E but are within the requirements of the contract, the Contracting Officer or FDO may increase the fee otherwise earned, not to exceed the total fee available for a specific fee period as identified within the clause titled, Allowable Costs and Fee. The Contracting Officer or FDO shall unilaterally determine the Contractor's achievement of any such exceptional performance.
- (e) In the event the Contracting Officer or FDO decides to exercise the rights set forth in paragraph (c) above, he/she will notify the Contractor, in writing, of the intended decision and that the written decision will be issued to the Contractor within ten (10) working days. Provided, however, that the Parties agree that the following resolution procedure will be available to the Contractor.
 - (1) Within five (5) working days of receipt of the notification, a Corporate Officer of the Contractor may request that a Resolution Council (RC), consisting of a Corporate Officer of the Contractor, the Laboratory Director or designee, the DOE-RL Assistant Manager for Science and Technology or designee, a representative of the cognizant DOE HQ office, the DOE-RL Contracting Officer, and the Manager, Richland Operations Office, consider the Contractor's objections. The RC shall have flexibility in determining the processes and procedures to be utilized and will take all steps necessary to act within twenty (20) working days, or such later period as the Manager, Richland Operations Office, may, in writing, authorize, in order to effect an alternative, if any, to the subject action. The RC may utilize the expertise of knowledgeable staff personnel or other individuals whose participation will assist in the resolution of relevant issues.
 - (2) If the RC is unable to develop an alternative acceptable to both DOE and the Contractor within the time frame established in subparagraph (e)(1), the Manager, Richland Operations Office, shall, at his sole discretion, issue a unilateral decision as to the action to be taken under this clause.
- (f) Neither the decision of the Contracting Officer to exercise the right set forth in paragraph (a) above nor any decision of the Manager, Richland Operations Office, under paragraph (b) above, shall constitute a "claim" as defined in the clause titled, Disputes, of this contract or the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq.

H-31 PROJECT MANAGEMENT SYSTEM

- (a) Project Management System. In the performance of this contract, the Contractor shall establish, maintain, and use a project management system that meets the requirements specified in the contract, and as further defined by the Contracting Officer. The Contractor's project management system shall be applicable to all projects, including Strategic and Major Systems, Major Projects, Other Line Item Projects, General Plant Projects, and expense funded Construction as defined by the Contracting Officer. The Contractor shall provide the Contracting Officer with a detailed, written description of the proposed project management system for approval. The Contractor project management system shall include features to allow the capability to:
- (1) Define the work elements for the project in an integrated manner that arranges work in a hierarchy of related elements to a level of detail in which work is assigned;
 - (2) Identify the project organizational structure responsible for accomplishing the work, and define the organizational elements in which work will be planned and controlled;
 - (3) Schedule the authorized work in a manner which describes the sequence of activities and identifies significant task interdependencies required to meet the requirements of the project;
 - (4) Identify physical products/modules, milestones, technical performance goals, or other indicators that will be used to measure progress;
 - (5) Establish and maintain a time-phased cost plan against which project cost performance can be measures;
 - (6) Identify, at least monthly, the significant differences between both planned and actual schedule, cost, scope performance, and provide the reasons for the variances in the detail needed by work scope and managing organizations. Summarize performance data through the project organization and/or work breakdown structure to support client needs and reporting data items specified in the contract.
 - (7) Develop revised estimates of cost at completion based on performance to date, commitment values for material, and estimates of future conditions;
 - (8) Incorporate authorized changes in a timely manner, recording the effects of such changes in budgets and schedules;
 - (9) Control retroactive changes to records pertaining to work performed that would change previously reported amounts for actual costs, work progress, or budgets.

System revisions necessary to assure minimum capabilities described herein shall be made with no charge to the estimated cost or price of the contract.

The Contracting Officer or authorized representative shall evaluate the Contractor's system. Cost effective application of controls will be a critical factor in determining

acceptability of the proposed system. The Contractor shall provide access to all pertinent records, data, and plans related to the operations of the maintenance management control system for purposes of gaining Contracting Officer approval of the system, approval of proposed changes, and operation of the project control system.

Upon approval of the project management system by the Contracting Officer, the Contractor shall fully implement the system. The Contractor shall not make any significant changes to the approved system without the prior written approval of the Contracting Officer.

The Contractor shall set forth applicable system requirements in those subcontracts identified in the project management system description and shall incorporate provisions for review and surveillance of the subcontractors' systems. The review will be conducted by the prime Contractor, unless the Government, Contractor, or subcontractor requests Government review.

H-32 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in the statute and regulation.

H-33 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999)

The contractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in the statute and regulation.

H-34 TRAVEL RESTRICTIONS (AL 2000-11)

- a) For contractor travel expenses incurred on or after October 1, 2000, a ceiling limitation of \$8,000,000.00 shall apply to all reimbursements made for contractor travel expenses to the extent allocable to work funded by DOE under the FY 2001 Energy and Water Development Appropriations Act under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer.
- b) Some travel costs are exempt from the ceiling, examples are:
 - 1. Travel performed under work for others agreements;
 - 2. Travel of subcontractors;
 - 3. Travel of non-DOE users to participate in experiments at DOE user facilities;
 - 4. Travel costs of travel management centers;
 - 5. Travel costs funded by other appropriations;
 - 6. Relocation costs;
 - 7. Costs of workshops/seminars (other than travel costs), such as, rental of

- meeting rooms, public address equipment, speakers fees;
 - 8. Registration costs of training classes;
 - 9. Travel expenses within the Laboratory Directed Research and Development program; and
 - 10. Travel associated with recruitment.
- c) Notwithstanding any other provisions of the contract or the source of funding, the contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 2000, and before October 1, 2001 which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- d) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
- (i) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (ii) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (iii) Standardized Regulations (SR) for travel allowances in foreign areas.
- e) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- f) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increase cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.